

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**GARY COOK and MICHAEL A. COOK,**

**Respondents,**

**v.**

**WILLIAM D. McELWAIN and SHARON E. McELWAIN, Husband and Wife,**

**Appellants.**

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DOCKET NUMBER WD76288

**Date: June 3, 2014**

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Appeal from:  
Bates County Circuit Court  
The Honorable Michael C. Dawson, Judge

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Appellate Judges:  
Division Two: Victor C. Howard, P.J., Alok Ahuja and Gary D. Witt, JJ.

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Attorneys:  
Eric M. Landoll, Nevada, MO and Joseph D. Baker, Osceola, MO, for appellant.  
William N. Marshall, III, Kansas City, MO, for respondent.

# **MISSOURI APPELLATE COURT OPINION SUMMARY**

## **COURT OF APPEALS -- WESTERN DISTRICT**

**GARY COOK and MICHAEL A. COOK**

**Respondents,**

**v.**

**WILLIAM D. McELWAIN and SHARON E. McELWAIN, Husband and Wife,  
Appellants.**

WD76288

Bates County

Millard Cook and his wife Laverne established two revocable trusts (the “Trusts”). Both Trusts own undivided one-half interests in land in Bates County. The beneficiaries of the Trusts are the lineal descendants of Millard and Laverne Cook.

In the Fall of 2010, one or more of the Trustees agreed to sell a fifteen-acre parcel of the land owned by the Trusts to the Appellants William and Sharon McElwain, and to lease the remaining trust property to the McElwains with a right of first refusal to purchase the leased property. Other beneficiaries of the Trusts objected that they had not been offered the same terms, and that the terms of the transactions were not in the best interests of the Trusts’ beneficiaries. On December 3, 2010, two Trust beneficiaries filed suit, seeking a temporary restraining order, and preliminary and permanent injunctive relief, to prevent the real-estate transactions from being consummated.

The circuit court entered a temporary restraining order blocking both the sale and lease transactions. The court conducted a hearing on the request for a preliminary injunction on February 8, 2011. On February 24, 2011, the circuit court entered a preliminary injunction against the performance of the lease agreement, but refused to enjoin the property sale.

The plaintiffs later filed a motion asking the court to convert the preliminary injunction into a permanent injunction. The McElwains objected, arguing that they were entitled to a trial on the merits of the permanent injunction request, and had developed evidence during discovery, subsequent to the preliminary injunction hearing, which they wished to present. Without conducting any further evidentiary hearing, the circuit court permanently enjoined the lease of Trust property to the McElwains on the terms previously agreed. The McElwains appeal.

**REVERSED**

Division Two holds:

Proceedings on requests for preliminary and permanent injunctive relief are distinct phases of an injunction action. Rule 92.02(c)(3) authorizes the court to order the consolidation of the hearings on preliminary and permanent injunctive relief. An order consolidating the trial on the merits with the preliminary injunction hearing must, however, be clear and unambiguous. Absent such an order, a trial court may not adjudicate the merits of a claim for a permanent injunction on the evidence presented at a hearing on an application for a preliminary injunction unless the parties agree.

In this case, the trial court gave no indication that it intended to rule the merits of the case based solely on the evidence presented at the preliminary injunction hearing, until it actually entered its judgment permanently enjoining the lease transaction. Moreover, the McElwains' counsel expressly objected to deciding the request for a permanent injunction without a further evidentiary hearing. Given the trial court's failure to provide the McElwains with *any* advance notice of its intent to deny them a further hearing, and their timely objection to the denial of a full trial, the permanent injunction entered by the circuit court must be reversed.

The plaintiffs argue that the evidence they presented at the preliminary injunction hearing, and the trial court's findings following that hearing, are sufficient to establish their right to *permanent* injunctive relief. The elements necessary to establish a right to preliminary and permanent injunctive relief are different, however. In addition, given their right to a trial prior to the issuance of a permanent injunction, the McElwains were not required to present their entire case at the preliminary injunction hearing. Findings made following a preliminary injunction hearing are merely interlocutory, and are not binding at a trial on the merits.

Before: Division Two: Victor C. Howard, P.J., Alok Ahuja and Gary D. Witt, JJ.

Opinion by: Alok Ahuja, Judge

**June 3, 2014**

<b>THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.</b>
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